

REMARKS

Claims 1-6, 8-17, and 19-22 are currently pending in the application. By this amendment, claims 1, 5, 13, 17, and 19 are amended and claims 21 and 22 are added for the Examiner's consideration. Claims 7 and 18 are canceled without prejudice or disclaimer. The above amendments do not add new matter to the application and are fully supported by the original disclosure. For example, support for the amendments is provided in the claims as originally filed, at Figures 1, and at pages 8 of the specification. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

Summary of Decision on Appeal

In the Decision on Appeal dated November 3, 2009 ("Decision on Appeal"), the Board of Patent Appeals and Interferences reversed the rejection of claims 7, 13-16, and 18 as anticipated by De Leo. The Board also reversed the rejection of claim 11 as anticipated by Walach. All other rejections were affirmed.

35 U.S.C. §102 Rejection

In the Final Office Action dated September 11, 2006, claims 1-20 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,107,588 issued to De Leo et al. In the Decision on Appeal, the Board reversed the rejections of claims 7, 13-16, and 18 as anticipated by De Leo. Therefore, claims 1-6, 8-12, 17, 19, and 20 remain rejected under 35 U.S.C. §102(b) as being anticipated by De Leo et al. This rejection is respectfully traversed.

Also in the Final Office Action, claims 1-20 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,274,836 issued to Walach et al. In the Decision on Appeal, the Board reversed the rejection of claim 11 as anticipated by Walach. Therefore, claims 1-10 and 12-20 remain rejected under 35 U.S.C. §102(b) as being anticipated by Walach. This rejection is also respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See, MPEP §2131. Applicants submit that the applied art does not show each and every feature of the claimed invention.

Claims 1-6, 8-12, 17, 19, and 20 in view of De Leo

By this response, independent claim 1 has been amended to incorporate the features of original claim 7. Also, independent claim 17 has been amended to incorporate the features of original claim 18. The rejection of claims 7 and 18 as anticipated by De Leo was reversed by the Board (Decision on Appeal, pages 10 and 13). Since the subject matter of claims 7 and 18 is now recited in claims 1 and 17, respectively, Applicants submit that De Leo does not anticipate claims 1 and 17.

Moreover, independent claim 1 recites *the control maintains a same grouping of contiguous output bins between the first pass phase and the second pass phase*, and independent claim 17 recites *constraining placement of the plurality of product during a second pass phase to the assigned group of contiguous output bins such that the assigned group of contiguous output bins remain constant between the first pass phase and a second pass phase*. In the Decision on Appeal, the Board held that De Leo does not disclose that groups of contiguous output bins remain constant between phases (Decision, page 11). Accordingly, Applicants submit that De Leo does not disclose *the control maintains a same grouping of contiguous output bins between the first pass phase and the second pass phase*, as recited in claim 1, or *constraining placement of the plurality of product during a second pass phase to the assigned group of contiguous output bins such that the assigned group of contiguous output bins remain constant between the first pass phase and a second pass phase*, as recited in claim 17.

Claims 2-6, 8-12, 19 and 20 depend from independent claims 1 and 17, respectively, and are distinguishable from De Leo at least for the same reasons as the respective base claims. Accordingly, Applicants respectfully request that the §102 rejection of claims 1-6, 8-12, 17, 19, and 20 in view of De Leo be withdrawn.

Claims 1-10 and 12-20 in view of Walach

Independent claim 1 recites, in pertinent part:

... the control maintains a same grouping of contiguous output bins between the first pass phase and the second pass phase.

Independent claim 13 recites, in pertinent part:

... a control allowing all input feeding devices of the plurality of input feeding devices complete access to all output groups of the plurality of output groups during the first pass phase

and assigning contiguous output bins to predetermined output groups of the plurality of output groups and associating each of the predetermined output groups with respective input feeding devices such that the predetermined output groups remain constant between the first pass phase and the second pass phase,
 wherein the contiguous output bins are one of touching and adjacent.

Independent claim 17 recites, in pertinent part:

... assigning each of the plurality of input devices to each of the assigned group of contiguous output bins; and
 constraining placement of the plurality of product during a second pass phase to the assigned group of contiguous output bins such that the assigned group of contiguous output bins remain constant between the first pass phase and a second pass phase.

Applicants submit that Walach does not disclose the recited control (claims 1 and 13) or method (claim 17) where groups of contiguous output bins remain constant between phases. Walach discloses sorting items into N output bins (col. 5, lines 37-63). However, Walach does not disclose that groupings of the output bins N contain contiguous ones of the output bins. In the Decision on Appeal, the Board found that ordinary meanings of the word “contiguous” are touching, nearby, and adjacent. Walach does not disclose that the output bins N of an assigned group are touching, nearby, and adjacent.

Walach discloses that the output bins N are sequentially numbered (e.g., 10-29) at lines 12-35 of col. 7. However, the numbering refers to an identification, not a location, of the output bins. Walach makes no mention of the location of the respective output bins N, much less to assigned groupings of contiguous output bins N. Therefore, Walach does not disclose *the control maintains a same grouping of contiguous output bins between the first pass phase and the second pass phase*, as recited in claim 1. For the same reason, Walach does not disclose *a control allowing all input feeding devices of the plurality of input feeding devices complete access to all output groups of the plurality of output groups during the first pass phase and assigning contiguous output bins to predetermined output groups of the plurality of output groups and associating each of the predetermined output groups with respective input feeding devices such that the predetermined output groups remain constant between the first pass phase and the second pass phase, wherein the contiguous output bins are one of touching and adjacent*, as

recited in claim 13. For the same reason, Walach does not disclose *assigning each of the plurality of input devices to each of the assigned group of contiguous output bins, and constraining placement of the plurality of product during a second pass phase to the assigned group of contiguous output bins such that the assigned group of contiguous output bins remain constant between the first pass phase and a second pass phase*, as recited in claim 17.

Applicants note that the rejection of claim 13 was affirmed by the Board in the Decision on Appeal. However, the Board did not address the issue of assigned groups of contiguous output bins with respect to Walach, and therefore did not hold that Walach does or does not disclose that groups of contiguous output bins remain constant between phases.

For the above-noted reason, Applicants submit that Walach does not disclose all of the features of independent claims 1, 13, and 17, and therefore does not anticipate the claimed invention. Claims 2-6, 8-10, 12, 14-16, 19, and 20 depend from independent claims 1, 13, and 17, respectively, and are distinguishable from Walach at least for the same reasons as the respective base claims. Claims 7 and 18 are canceled, such that the rejection of these claims is moot.

Accordingly, Applicants respectfully request that the §102 rejection of claims 1-6, 8-10, 12-17, 19, and 20 in view of Walach be withdrawn.

New Claims

New claims 21 and 22 are added by this amendment and are believed to be allowable for the following reasons. Claims 21 and 22 depend from independent claims 1 and 13, respectively, and are distinguishable from the applied art at least for the same reasons as the respective base claims. Moreover, new claims 21 and 22 additionally recite *each of the plurality of input feeding devices comprises a pause device, an inserter, and an optical reader, all communicating with and controlled by the control*, which is not disclosed by the applied art. More specifically, Walach does not disclose input feeding devices that include a pause device, an inserter, and an optical reader, all of which are communicating with and controlled by a control. Instead, Walach discloses input bins P. There is no suggestion in Walach that the input bins P have any one of a pause device, an inserter, and an optical reader. Instead, the input bins P merely receive items and feed the items to the sorting mechanism 20 (FIG. 1). It is the sorting mechanism 20 that operates to sort the items that were placed in the input bins P in accordance with all or a portion

of the bar-coded destination code. Therefore, there would be no need for the input bins P to have any of a pause device, an inserter, and an optical reader, since the operations associated with the recited devices are handled instead by the sorting mechanism 20.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 19-0089.

Respectfully submitted,
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